

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

C.D., Appellant )

and )

DEPARTMENT OF AGRICULTURE, )  
NATIONAL FOREST SERVICE, TAHOE )  
NATIONAL FOREST, Camptonville, CA, )  
Employer )

---

**Docket No. 07-1179**  
**Issued: September 25, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 28, 2007 appellant filed a timely appeal from a December 21, 2006 merit decision of the Office of Workers' Compensation Programs that granted him a schedule award for 10 percent impairment of the right lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award

**ISSUE**

The issue is whether appellant has more than 10 percent impairment of the right lower extremity, for which he received a schedule award.

**FACTUAL HISTORY**

On October 7, 1987 appellant, then a 35-year-old engineer, filed a traumatic injury claim alleging that he injured his right knee on October 4, 1985 when he stumbled over logging. He did not stop work. On October 8, 1985 Dr. Roland O. Dutton, a Board-certified orthopedic

surgeon, diagnosed right medial meniscus tear. He requested authorization to perform an arthroscopy and meniscus repair/meniscectomy. The Office accepted appellant's claim for right knee tear and authorized the surgery.

On November 1, 1985 Dr. Dutton performed a partial arthroscopic medial meniscectomy to repair a right medial meniscus tear. In a July 1, 1987 report, he indicated that appellant's condition had not improved and recommended a repeat arthroscopy. The Office authorized the second arthroscopy. On August 28, 1987 Dr. Dutton performed a lateral subcutaneous retinacular release on the right knee.

On November 9, 2004 appellant filed a claim for a recurrence of his medical condition. He did not stop work. Appellant began experiencing pain in his knee in October 2004. The Office accepted his claim. In a May 10, 2005 report, Dr. Donald G. Downs, a Board-certified family practitioner, noted appellant's medical history of a medial meniscus tear in 1985 and his current complaints of right medial knee pain "that is worse with twisting on his knee, worse with ambulating on uneven ground, worse with squatting activities with occasional giveaway sensations." He diagnosed probable recurrent medial menisci tear versus osteochondral injury of the left knee. Dr. Downs found that appellant did not fully recover from his October 4, 1985 work injury although he had managed to continue in his usual employment.

On September 13, 2005 appellant requested a schedule award. On September 23, 2005 the Office informed him that it was unable to consider his schedule award request because the medical evidence of record indicated that his condition had not reached maximum medical improvement.

In a May 25, 2005 report, Dr. David B. Coward, a Board-certified orthopedic surgeon, diagnosed medial meniscus tear with medial compartment articular cartilage injury of the right knee. He noted that appellant began experiencing increasing knee pain in 2004 and that x-ray testing revealed evidence of mild degenerative changes. Although Dr. Coward concluded that appellant could continue working at his present job status, he noted that "twisting, turning, squatting, kneeling and stairs are all aggravating factors." He noted that appellant's right knee range of motion was "0 to 135." Dr. Coward determined that appellant was a candidate for a repeat knee arthroscopy to better assess the status of his interarticular structures.

The Office authorized a right knee arthroscopy on September 29, 2005.

On October 19, 2005 Dr. Coward performed partial medial and lateral meniscectomy on the right knee. He recorded a preoperative diagnosis of right knee medial meniscus tear and a postoperative diagnosis of right knee medial meniscus tear with lateral meniscus tear. The October 20, 2005 diagnostic report of Dr. Emily L. Leff, a Board-certified pathologist, diagnosed "shavings, right knee: tissue consistent with knee shavings showing mild degenerative changes of cartilage." In an October 27, 2005 follow up report, Dr. Coward noted that appellant should reach permanent and stationary status by March 1, 2006. He reported that appellant's knee range of motion was "0 [to] 120."

On December 8, 2005 Dr. Coward reported that appellant's "knee range of motion ... lacked the last few degrees of full knee flexion and extension." Dr. Coward noted the same

range of motion in reports dated January 26 to September 19, 2006. In a March 7, 2006 report, Dr. Coward opined that appellant was permanent and stationary and could work full duty.

On November 21, 2006 the Office requested that an Office medical adviser review the record and address appellant's permanent impairment.

In a December 4, 2006 report, the Office medical adviser concluded that appellant had 10 percent permanent impairment of the right lower extremity. He noted that appellant's surgical history, including the partial arthroscopic medial and lateral meniscectomy on October 19, 2005. The Office medical adviser explained that postoperative progress reports indicated that appellant reached maximum medical improvement on March 7, 2006 and that he "lacked the last few degrees of full extension and flexion." Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>1</sup> he recommended 10 percent impairment of the right lower extremity. The Office medical adviser based his conclusion on the Diagnosis-Based Estimates in Table 17-33 of the A.M.A., *Guides*, which provide for 10 percent impairment for a partial medial and lateral meniscectomy.

By decision dated December 21, 2006, the Office granted appellant a schedule award for 10 percent impairment of the right lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

### **ANALYSIS**

The Board finds that appellant has not established that he has more than 10 percent impairment of the right leg. Although Dr. Coward submitted several reports, he did not address appellant's right leg impairment under the A.M.A., *Guides*. While he noted that appellant had motion of "0 [to] 120" in his October 27, 2005 report, this is insufficient to establish the basis for a schedule award as appellant had not yet reached maximum medical improvement.<sup>5</sup> In

---

<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> See *id.*; *Linda R. Sherman*, 56 ECAB \_\_\_\_ (Docket No. 04-1510, issued October 14, 2004).

<sup>5</sup> See *Robert P. Stafford*, 30 ECAB 234 (1978).

subsequent reports, Dr. Coward did not provide specific measurements by which the impairment to appellant's knee could be rated under the A.M.A., *Guides*.

The Office medical adviser's December 4, 2006 report addresses appellant's degree of permanent impairment pursuant to the A.M.A., *Guides*. He reviewed the medical evidence and found that appellant had 10 percent impairment of the right leg. The Office medical adviser based his recommendation<sup>6</sup> on Table 17-33 of the A.M.A., *Guides*. Table 17-33 provides that a partial meniscectomy, medial and lateral, such as appellant underwent on October 19, 2005 represents 10 percent impairment of the lower extremity.<sup>7</sup> The Board finds that the Office medical adviser based his opinion on a proper review of the record and appropriately applied the A.M.A., *Guides* in finding that appellant had 10 percent impairment of the right lower extremity. The Board notes that the Office medical adviser found no basis for additional impairment.

On appeal, appellant asserts that his schedule award was insufficient as it did not take into account his activity limitations and the manner in which his accepted condition affected his injury to perform his work duties. However, the Board has held that the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.<sup>8</sup> Thus, the impact of the work injury on appellant's ability to perform his work duties is not a basis for paying a schedule award under 5 U.S.C. § 8107.

### **CONCLUSION**

The Board finds that appellant has not shown that he has greater than 10 percent impairment of the right lower extremity, for which he received a schedule award.

---

<sup>6</sup> A.M.A., *Guides* 546, Table 17-33.

<sup>7</sup> *Id.*

<sup>8</sup> *Denise L. Crouch*, 57 ECAB \_\_\_\_ (Docket No. 04-1905, issued October 21, 2005). The Board in *Crouch* also noted that the provisions for schedule awards under the Act are separate from consideration of factors that would be used to determine disability based on wage loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board